

Hearing Date: June 21, 2018
Hearing Time: 11:00 a.m.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Eugene Harrington d/b/a Gotham City Solutions,

Chapter 11

Debtor.

Case No. 18-41635 (NHL)

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**NOTICE OF MOTION OF THE UNITED STATES TRUSTEE
FOR ORDER DISMISSING CHAPTER 11 CASE OR, ALTERNATIVELY,
CONVERTING CHAPTER 11 CASE**

PLEASE TAKE NOTICE that, upon the within motion and the concurrently-filed memorandum of law and declaration, William K. Harrington, the United States Trustee for Region 2, in furtherance of the duties and responsibilities set forth in 28 U.S.C. §§ 586(a)(3) and (a)(5), will move this Court before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge at the Conrad B. Duberstein Courthouse, United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201, on **June 21, 2018, at 11 a.m.**, or as soon thereafter as counsel can be heard, for the entry of an order dismissing this chapter 11 case, or, in the alternative, converting it to chapter 7, and for such other and further relief as the Court may deem just and proper. The original application and supporting statements are on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE, that any responsive papers should be filed with the Court, and personally served on the United States Trustee, at 201 Varick Street, Suite 1006, New

York, New York 10014, to the attention of Nazar Khodorovsky, Esq., no later than three days prior to the return date set forth above. Such papers shall conform to the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
May 10, 2018

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Nazar Khodorovsky
Nazar Khodorovsky
Trial Attorney
201 Varick Street, Suite 1006
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Eugene Harrington d/b/a Gotham City Solutions,

Chapter 11

Debtor.

Case No. 18-41635 (NHL)

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**MEMORANDUM OF LAW IN SUPPORT OF THE
UNITED STATES TRUSTEE’S MOTION FOR ORDER
DISMISSING CHAPTER 11 CASE, OR
CONVERTING CHAPTER 11 CASE TO CHAPTER 7**

**TO: THE HONORABLE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY JUDGE:**

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), in furtherance of the duties and responsibilities set forth in 28 U.S.C. § 586(a)(3) and (a)(5), does hereby move this Court for an order dismissing this chapter 11 case or, in the alternative, converting this chapter 11 case to chapter 7 under 11 U.S.C. § 1112(b) (the “Motion”). In support thereof, the United States Trustee represents and alleges as follows:

SUMMARY

There is cause to dismiss or convert this chapter 11 case under 11 U.S.C. § 1112(b)(4). Specifically, Eugene Harrington (the “Debtor”), has failed to file his Statement of Financial Affairs and his Schedules A/B, C, D, E/F, G and H (collectively, the “Schedules”), which constitutes cause to convert or dismiss under 11 U.S.C. § 1112(b)(4)(F). Additionally, in violation of Section 1112(b)(4)(G), the Debtor failed to appear at the scheduled Section 341(a)

meeting of creditors in this case.

The Court should dismiss this case because the Debtor has failed to provide adequate information as to his assets and liabilities. Without such information, administration of this estate may not be economical or feasible for a chapter 7 trustee. Dismissal of this case, rather than its conversion to chapter 7 is, therefore, in the best interests of the Debtor's estate and his creditors.

BACKGROUND

The Debtor, an individual, commenced this case by filing a voluntary petition under chapter 11 of the Bankruptcy Code *pro se* on March 26, 2018 (the "Petition Date"). *See* ECF Doc. No. 1. The United States Trustee has not appointed an official committee of unsecured creditors in this case.

To date, the Debtor has not filed his Schedules. *See* Declaration of Nazar Khodorovsky in Support of the Motion (the "Khodorovsky Declaration"), ¶ 4. The Debtor's deadline to file his Schedules was April 9, 2018 (the "Schedules Deadline"). *Id.*, ¶ 3. The Debtor has not sought an extension of the Schedules Deadline. *Id.*, ¶ 5.

The meeting of creditors pursuant to 11 U.S.C. § 341 in this case was noticed for and held on April 30, 2018 (the "First Meeting"). *See* Khodorovsky Decl., ¶ 6. The Debtor did not appear at the First Meeting. *Id.*, ¶ 7.

LEGAL STANDARDS

Cause to Dismiss or Convert

Section 1112(b) of the Bankruptcy Code provides, in part, that, on request of a party in interest, an after notice and a hearing,

the Court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1) (emphasis added) (as amended by the Bankruptcy Technical Corrections Act of 2010, Pub. L. No. 111-327 (Dec. 22, 2010)).

Among others, the following enumerated factors provide cause to convert or dismiss:

(a) failure to comply with reporting requirements in violation of 11 U.S.C. § 1112(b)(4)(F); and

(b) failure to attend meetings of creditors pursuant to 11 U.S.C. § 341 in violation of 11 U.S.C. § 1112(b)(4)(G).

11 U.S.C. § 1112(b)(4).

ARGUMENT

A. There is Cause to Dismiss or Convert this Case Because the Debtor Has Failed to Comply with the Administrative Requirements of the Bankruptcy Code.

Due to the Debtor's failure to file his schedules and his failure to attend a meeting of creditors, the United States Trustee asserts that material grounds exist for relief under 11 U.S.C. § 1112.¹ 28 U.S.C. § 586(a)(8). These reasons also provide express cause for the dismissal or conversion of this chapter 11 case under Section 1112(b)(4). 11 U.S.C. § 1112(b)(4) (F), (G).

Failure to File Schedules Constitutes Cause for Dismissal Under 11 U.S.C. § 1112(b)(4)(F)

Under Rule 1007 of the Federal Rules of Bankruptcy Procedure, debtors who commence

¹ Under the BAPCPA, "in any case in which the United States trustee finds material grounds for relief under section 1112 [], the United States trustee shall apply promptly [for such] relief." 28 U.S.C. § 586(8). *See also* 11 U.S.C. § 307 (providing that United States Trustee may raise and may appear and be heard on any issue in any case or proceeding under Title 11).

voluntary bankruptcy cases are required to file with the Court their “schedules of assets and liabilities” and their “statement of financial affairs” either “with the petition or within 14 days thereafter.” Fed. R. Bankr. P. 1007(b),(c). Here, the Debtor did not file his Statement of Financial Affairs and his Schedules A/B, C, D, E/F, G, and H by the Schedules Deadline, or to date. This unexcused failure to satisfy timely any filing or reporting requirement constitutes cause to dismiss or convert his chapter 11 case under 11 U.S.C. § 1112(b)(4)(F). *See In re Spencer C. Young Invs. / The Courtyard of Chapel Hill, LLC*, Case No. 08-81852, 2009 Bankr. LEXIS 869, at *10 (Bankr. M.D. N.C. Feb. 4, 2009) (holding that failure to file schedules constitutes cause for dismissal under 11 U.S.C. § 1112(b)(4)(F)).

**Failure to Attend Meeting of Creditors
Constitutes Cause for Dismissal
Under 11 U.S.C. § 1112(b)(4)(G)**

Pursuant to Section 1112(b)(4)(G), there is cause for dismissal or conversion if a debtor, without good cause shown, fails to attend meetings of creditors under Section 341(a). 11 U.S.C. § 1112(b)(4)(G). In this case, the Debtor failed to appear at the Section 341(a) meeting of creditors that was noticed for and held on April 30, 2018. *See Khodorovsky Decl.*, ¶¶ 6-7.

Consequently, there was no party who could be examined under oath at the meeting of creditors regarding the Debtor’s financial affairs. Cause exists, therefore, to dismiss or convert the Debtor’s case due to the Debtor’s failure to attend the Section 341(a) meeting of creditors scheduled in this case.

B. The Court Should Dismiss this Case.

The United States Trustee respectfully requests that the Court dismiss this chapter 11 case rather than convert it to chapter 7. Dismissal in this case is preferable to conversion, because the

Debtor has failed to provide adequate information as to his assets and liabilities. Without such information, administration of this estate may not be economical or feasible. Dismissal is, therefore, preferable to conversion under these circumstances.

C. Notice

The United States Trustee has served the Motion and Memorandum of Law by first class mail upon the Debtor, and all other parties that filed a notice of appearance in the case. The Court will serve a notice of motion on all creditors and parties in interest. The United States Trustee respectfully requests that this be deemed good and sufficient notice of the motion, and that no further notice is necessary or required.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order dismissing this chapter 11 case, pursuant to 11 U.S.C. § 1112(b) or, in the alternative, converting it to chapter 7, and granting such other and further relief as maybe deemed just and proper.

Dated: New York, New York
May 10, 2018

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Nazar Khodorovsky
Nazar Khodorovsky
Trial Attorney
201 Varick Street, Suite 1006
New York, New York 10014
Tel. No. (212) 510-0500
Fax No. (212) 668-2255

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Eugene Harrington d/b/a Gotham City Solutions,

Chapter 11

Debtor.

Case No. 18-41635 (NHL)

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**DECLARATION OF NAZAR KHODOROVSKY IN SUPPORT
OF THE UNITED STATES TRUSTEE'S MOTION FOR ORDER
DISMISSING CHAPTER 11 CASE OR,
ALTERNATIVELY, CONVERTING THIS CASE TO CHAPTER 7**

I am a Trial Attorney for movant, William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”). Within his Office, I am responsible for monitoring the chapter 11 case captioned above on his behalf. I make this declaration based on personal knowledge, information and belief formed from records of the Office of the United States Trustee, kept in the ordinary course of its business, and my personal review earlier today of the docket of this case on the PACER information system. If called, I would testify to the following:

1. Eugene Harrington (the “Debtor”) commenced this case by filing a voluntary petition *pro se* under chapter 11 of the Bankruptcy Code on March 26, 2018 (the “Filing Date”).
2. The United States Trustee has not been able to appoint an official committee of unsecured creditors in this case.
3. The Debtor's deadline for filing his Statement of Financial Affairs and its Schedules A/B, C, D, E/F, G, and H (collectively, the “Schedules”) was April 9, 2018 (the “Schedules Deadline”).
4. The Debtor has not filed the Schedules to date.

5. The Debtor has not sought an extension of the Schedules Deadline.
6. The initial meeting of creditors pursuant to 11 U.S.C. § 341 in this case was noticed for and held on April 30, 2018 (the “First Meeting”).
7. The Debtor did not appear at the First Meeting.

I declare under penalty of perjury that the information contained in this Declaration is true and correct.

Dated: New York, New York
May 10, 2018

/s/ Nazar Khodorovsky
Nazar Khodorovsky

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Eugene Harrington d/b/a Gotham City Solutions,

Chapter 11

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Case No. 18-41635 (NHL)

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AFFIRMATION OF SERVICE

Nazar Khodorovsky affirms under penalty of perjury that the following is true and correct:

1. I am a trial attorney with the Office of the United States Trustee for Region 2.
2. On May 10, 2018, I caused true and correct copies of the Notice of Motion, the Motion of the United States Trustee for an order Dismissing this Chapter 11 Case, or in the alternative, Converting this Chapter 11 Case to a Case under Chapter 7 (the "Motion"), and the Declaration of Nazar Khodorovsky in Support of the Motion, to be served by first-class mail upon the parties listed on the attached Schedule A by depositing true copies of same in sealed envelopes, with postage pre-paid thereon, in an official depository of the U.S. Postal Service within the City and State of New York.

/s/ Nazar Khodorovsky
Nazar Khodorovsky

Schedule A

Eugene Harrington
87 Hales Ave
Staten Island, NY 10312

Ehret Anne Van Horn, Esq.
Gross Polowy LLC
1775 Wehrle Drive, Suite 100
Williamsville, NY 14221

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

NYS Department of Labor
State Office Campus
Building #12, Room #256
Albany, NY 12240

Allan and Ellyn Lerner
73 Startop Drive
Montauk, NY 11954

Melissa Lerner, Erica Lerner
30 East 65th Street, Apt. 6E
New York, NY 10065

US National Bank
388 Greenwich Street
New York, NY 10005